



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
 ) ISCR Case No. 15-03580  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Garcia, Esq., Department Counsel  
For Applicant: August Bequai, Esq.

11/22/2016  
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**Decision**  
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CERVI, GREGG A., Administrative Judge:

Applicant mitigated the financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a Questionnaire for National Security Positions (SF 86) on November 17, 2014, requesting the continuation of her security clearance. After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD) Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), dated November 5, 2015, explaining it was unable to find that it was clearly consistent with the national interest to grant eligibility for access to classified information. It detailed security concerns under Guideline F, financial considerations.<sup>1</sup>

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining*

Applicant responded to the SOR on December 7, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 23, 2016, scheduling the hearing for June 29, 2016. At the request of Applicant's counsel, the hearing was rescheduled to July 28, 2016. The hearing was convened as rescheduled. Government Exhibits (GE) 1 through 4 and Applicant Exhibits (AE) A through K were admitted into evidence without objection. Applicant testified at the hearing. DOHA received the hearing transcript (Tr.) on August 5, 2016. The record was held open for Applicant to submit additional information. She submitted additional exhibits marked together as AE L, which were admitted without objection.

### **Findings of Fact**

Applicant is a 57-year-old logistics analyst working for a defense contractor since 2013. She currently holds a security clearance and is requesting its renewal. She graduated from a U.S. service academy in 1981 and received her master's degree 1991. She honorably served as an officer on active duty in the military from 1981 to 2001, retiring in 2001. She is single, but was previously married in 1983, separated in 2001, and divorced in 2003. She has two children, ages 17 and 18 years old.

The SOR alleges five delinquent debts that total about \$127,000. Additionally, the SOR alleges she failed to file federal income tax returns for tax years 2009, 2011, 2012, and 2013; and state income tax returns for tax years 2011, 2012, and 2013. The SOR allegations are supported by the evidence. Applicant's actions with respect to the SOR allegations and the current status are noted below:

<b>SOR ALLEGATION</b>	<b>ACTION TAKEN</b>	<b>CURRENT STATUS</b>
1.a Federal income tax return for 2009.	Information provided to tax preparer before due date. Based on discussions with preparer, Applicant thought the federal return was e-filed on time with her state tax return (which was accepted, and expected a refund. Her preparer had questions on deductions, but Applicant assumed they were to be resolved at later date. IRS shows automatic extension granted to December 2010. Final return filed April 2012.	Applicant was not aware the federal return was not filed on time. Final tax return filed 2012. \$0 owed. Resolved

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*Eligibility for Access to Classified Information (AG)*, effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaced the guidelines in Enclosure 2 to the Directive.

1.b Federal income tax return for 2011.	Information provided to tax preparer before due date. IRA rollover in 2011 was incorrectly labeled income (only portion was withdrawn from account). Paid partial tax due in April 2012, but disputed incorrect 1099. Preparer closed office and left company before completing return, but requested extension to December 2012 to file. Applicant delayed resolving issue until investment company acknowledged 1099 error and new tax accountant consulted. Applicant filed the 2011 return in 2014 after resolving dispute.	Applicant consulted new tax accountant and filed late with corrected 1099 information. Final return filed in 2014. \$0 owed. Resolved
1.c Federal income tax return for 2012.	New tax preparer consulted and return filed on time in 2013.	Filed correctly. \$0 owed. Resolved
1.d Federal income tax return for 2013.	Return filed on time in 2014.	Filed correctly. \$0 owed. Resolved
1.e State income tax return for 2011.	Return filed late with federal return after dispute resolved by new tax accountant. Refund issued January 2014.	Filed late with federal return. \$0 owed. Resolved
1.f State income tax return for 2012.	Filed on time in 2013.	Filed correctly. \$0 owed. Resolved
1.g. State income tax return for 2013.	Filed on time in 2014.	Filed correctly. \$0 owed. Resolved
1.h Bank credit account for \$21,705.	Negotiated settlement and paid in full in March 2016.	Paid in full. Resolved

1.i Bank equity line of credit account for \$83,833.	Line of credit taken in 2006. Fell behind in 2011. Debt charged-off. In 2012, Applicant negotiated payment plan with collection agent and claims made some payments toward debt, but not continuous. She made a good faith payment in July 2016 based on discussions to reduce interest rate.	Sporadic payments made, with last payment in July. In negotiation to reduce interest rate, awaiting proposal from collection agent. Recent good faith payment made but remains unresolved.
1.j Retail credit card account for \$367.	Paid in 2016.	Paid in full. Resolved
1.k Retail credit card account for \$112.	Paid in 2016.	Paid in full. Resolved
1.l IRS debt for tax year 2011 for \$21,000.	Tax debt in error. See 1.b above. Paid taxes owed.	Paid in full. Resolved

Applicant separated from her husband in 2001. He left the state to attend law school. Applicant left her leased home and moved her children into an apartment with her mother, who became a caregiver for Applicant's children. In October 2002, she purchased a home. She was divorced in July 2003, with full custody of her children. Applicant was devastated when her mother suffered from cancer and passed away in March 2009.

In August 2011, Applicant's employer moved to another state, and she was unable to follow. She was unemployed for more than two months. She rolled over her 401k to an individual retirement account (IRA) and took an early withdrawal of \$35,000 of it to pay home repairs and debts. She was taxed on the early withdrawal, but the rollover should have been a non-taxable event. She was not aware that she would incur tax penalties at the time of withdrawal. The investment company provided an incorrect 1099 for her 2011 taxes.

She was again employed in October 2011, but left the position in August 2012.<sup>2</sup> She remained unemployed from August 2012 to December 2012. In January 2013, she found a position as an executive secretary in a federal agency, but it payed substantially less than she was previously paid. She moved to her current employer in March 2013. She consulted a financial planner in March 2015 to organize her finances and assist her with paying off debts, and she consulted with an attorney to advise her on bankruptcy options, which she rejected. She also worked with a new accountant to correct her tax filings. She always used a tax preparer to file income tax returns, and believed her 2009

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<sup>2</sup> She resigned because of the sudden departure of her hiring manager. GE 1.

return was filed on time. She also disputed the amount owed on her 2011 return because of the investment company mistake in accounting for her IRA rollover and early withdrawal.

Applicant earns a substantial salary and receives a monthly military retirement and some child support assistance.<sup>3</sup> She has about \$500 in net remainder each month after paying expenses, and approximately \$5,000 in savings. She also earns additional income through a part-time yard-sale business. She is able to meet her expenses based on her income, without incurring additional debt. She is up-to-date on her tax returns, and does not owe the IRS or state tax authorities. She is in the process of negotiating a reduction in interest on her line of credit debt (SOR 1.i). She has made some payments toward this debt in the past, and resumed a recent good-faith payment of \$559 as she negotiates a reduced interest rate. She is expected to continue making monthly payments until the debt is resolved. The remaining SOR debts have been paid and resolved satisfactorily.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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<sup>3</sup> It is unclear when the Applicant's ex-souse's child support obligation stops, and whether he has faithfully fulfilled this obligation.

relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations, and
- (g) failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of delinquent debts that she was mostly unable to pay. She also failed to file her 2009 and 2011 tax returns on time. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast

doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

There is sufficient evidence to determine that Applicant's financial delinquencies have been or are being resolved. She suffered periods of unemployment and underemployment that directly impacted her financial status. She also is a divorced single mother who relied on her mother as a cohabitant to provide child care after the divorce. She was devastated by the loss of her mother in 2009 after suffering from cancer.

I find that Applicant initiated good-faith efforts to resolve her debts and to repay most of the creditors to date. A remaining debt is in the negotiation process and Applicant has resumed payments with a good-faith payment during the process. Her tax filing delinquencies resulted from confusion in 2009 about work completed by a tax preparer, and a dispute over how an IRA rollover and partial early withdrawal would be accounted for on her 2011 tax return. Although she has always relied on professional assistance with federal and state tax preparation, she failed to adequately keep abreast of the status of her return in 2009, and she failed to take immediate, appropriate action when the 2011 dispute arose. However, she has made significant efforts to retain appropriate professional assistance, file her delinquent tax returns correctly, and to ensure that all other returns were filed on-time. All federal and state tax returns have been filed and she has no past-due tax liability.

Her financial issues no longer cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20 (a), (b), (c), (d), and (e) apply. I am confident Applicant will continue to use her financial resources to pay her obligations on time, and stay ahead of her debts to avoid further delinquencies. Overall, Applicant's financial problems have been resolved or are under control. I find that the financial considerations concerns have been sufficiently mitigated.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant's financial problems resulted from unusual circumstances. Once she became financial stable with her current employer, she diligently approached her creditors and satisfied the majority of her debts. She is in the process of resolving the last debt. Additionally, once she became aware that her 2009 federal tax return was not filed on time, she resolved the situation. Likewise, although she delayed in resolving the dispute over her 2011 taxes, she eventually obtained competent help and resolved the matter satisfactorily. All other tax returns were filed when due, and she has no current tax liability. I believe her financial troubles are behind her and she will continue to ensure her finances are addressed in an appropriate manner.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.l:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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GREGG A. CERVI  
Administrative Judge